IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

ESTATE DUTY REFERENCE No 7 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CONTROLLER OF ESTATE DUTY

Versus

KAMAL K PARIKH

Appearance:

MR AKIL KURESHI instructed by MR. MR BHATT
for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE M.S.SHAH

Date of decision: 22/02/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this Reference, at the instance of the Revenue, the following question is referred to us for our opinion :

"Whether, the Appelllate Tribunal has been right in law in holding that Rule 1D of W.T. Rules as interpreted by the Gujarat High Court in its decision in the case of Ashok K. Parikh (129 ITR 46) applies in respect of valuation of unquoted shares even under the Estate Duty Act ?"

2. Deceased Kamal Parikh expired on 21.7.1968. At the time of his death, he was holding 40 ordinary shares (in the capacity of individual) and 200 ordinary shares (in the capacity as HUF) of a Private Limited CompanyMehta Parikh & Co. For determining the value of the shares, reliance was placed on the balancesheet of the said Company as on 31.12.1967. The Assistant Controller of Estate Duty, however, made two adjustments. The first was regarding value of goodwill with which we are not concerned. The second adjustment made by the Assistant Controller was regarding deduction on account of provision for tax. The Assistant Controller deducted the tax liability only in excess of advance tax paid. As a result of this adjustment, the value of each share came to Rs. 1600/per share.

The accountable person filed an appeal against the aforesaid valuation and on the controversy in question, the Controller of Estate Duty gave a finding that in deducting the liabilities, the provision for tax should be deducted and advance tax should be excluded from the assets in accordance with the decision of this Court in C.W.T. v. ASHOK K. PARIKH, (1981) 129 I.T.R. 46. In appeal filed by the Revenue before the Income-tax Appellate Tribunal, the scope of Rule 1D of the Wealth-tax Rules, 1957 ("Rules" for short) came-up for interpretation and the Tribunal held that Rule 1D of the Rules is to be applied for determining the value of unquoted shares under the Estate Duty Act also and the same has to be applied as interpreted by this Court in ASHOK K.PARIKH (supra). Hence, this Reference at the instance of the Revenue.

3. At the hearing of this Reference, none appears for the respondent-assessee, though served. We have heard learned counsel Mr. Akil Kureshi instructed by Mr. M.R.Bhatt for the Revenue.

4. We may note at this stage that at the hearing before the Tribunal, the departmental representative had conceded that Rule 1D of the Wealth Tax Rules was to be adopted for valuation of shares even in estate duty assessment and this concession was made on the basis of the Minutes of the 16th Meeting of the Direct Taxes Advisory Committee, dated 2.2.1972. The only question that was considered was the interpretation of the said Rule.

5. The learned counsel for the Revenue submits that now the controversy is concluded by the decision of the Apex Court in BHARAT HARI SINGHANIA AND OTHERS v. COMMISSIONER OF WEALTH-TAX, (1994) 207 ITR 1. We have gone through the said decision and particularly the elaborate discussion on the subject under Question no.5 about interpretation of sub-clause(a) of clause (i) and sub-clause (e) of clause (ii) of Explanation II to Rule 1D of the Wealth Tax Rules, 1957. After laying down the principles, the Apex Court has also given an illustration to explain how the rule is required to be worked out in practice. The Apex Court has also observed that it was not necessary to deal with the opposing view of the Gujarat High Court in CWT v. ASHOK K.PARIKH, (1981) 129 ITR 46.

6. In view of the aforesaid clear pronouncement of the Apex Court, we answer the question as under :

Rule 1D of the Wealth-Tax Rules,1957 as interpreted by the Apex Court in BHARAT HARI SINGHANIA AND OTHERS v. CWT, (1994) 207 ITR 1,(relevant Pages 31 and 32) shall apply in respect of valuation of unquoted shares even under the Estate Duty Act.

7. The Reference stands disposed of accordingly with no order as to costs.

(J.M.Panchal,J.)

(M.s.Shah, J.)

(patel)